UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/49/Add.1
13 September 1999

ENGLISH
Original: SPANISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1999

Addendum

PARAGUAY*

[4 June 1999]

* The initial report submitted by the Government of Paraguay is contained in document CAT/C/12/Add.3; for its consideration by the Committee, see documents CAT/C/SR.158, 159 and 161 and the Official Records of the General Assembly, Forty-ninth session, Supplement No. 44 (A/49/44, paras. 52-65). For the second periodic report, see documents CAT/C/29/Add.1, CAT/C/SR.289, 290 and 292 and the Official Records of the General Assembly, Forty-second session, Supplement No. 44 (A/52/44, paras. 189-213).

1. The obligation to respect rights is reflected in the acknowledgement of the existence of international monitoring and control mechanisms which allow for persons to bring legal proceedings, to use the systems not as a court of fourth instance or a court of cassation but as a subsidiary element complementing the internal system.

2. However, both in general reports and in individual petitions under the reporting process, the conformity of internal administrative, judicial and legislative acts of the State with treaty obligations is necessarily verified. This means that every branch of government can be a source of international responsibility for the State.

3. The exhaustion of domestic remedies before a petition is submitted is a rule with exceptions, for if there are no remedies to be exhausted under domestic legislation or no due process of law, the person is unable to exhaust remedies or is prevented from doing so, or they are ineffective because of delay or for some other reason, and the way is clear to accede to international justice. On a continent where impunity prevails, along with serious shortcomings in the administration of justice the ineffectiveness of internal justice is the rule.

4. There is a need not only to introduce legislative measures, but also to adapt the judicial and administrative structure of the State to this change. From this point of view, the establishment of an Office of Ombudsman (Defensor del Pueblo), which has been delayed for so long, is the missing element in dealing with public complaints both about violations of human rights and poor public administration and services.

5. The fact that an ombudsman has not yet been designated, which is directly related to political issues, shows how badly a constitutional institution of such scale and importance for the protection of human rights is missed among the Paraguayan political class. This institution, which has aroused great expectations since it was approved in the 1992 Constitution, has created some fear and apprehension about the political considerations which might prevail over the considerations of fitness, ability and honesty which in an institution of this type should override all else.

6. In the same way the Office of Public Defence Counsel which falls under the Supreme Court of Justice and has 70 defence lawyers for poor suspects throughout the country under its responsibility, was set up this year; if it were sufficiently well organized and had enough resources, it might be able to deal with the countless demands from persons with scant resources who receive little help from defence lawyers for poor suspects who are unable to cope.

7. Developments relating to the General Defence Counsel Office, the setting up and enlargement of which had become urgent, since access to public defence counsel had become virtually non-existent in trials because of this institution's lack of material and human resources, are to be welcomed. For this institution to be able to function efficiently, however, it is necessary to use modern systems of quality control management, so as to streamline its operation and make it more effective.

8. The third obligation, which is to guarantee persons the exercise of their rights, means reorganizing the legal system so as to provide victims of human rights violations with access to effective remedies in order to obtain satisfaction of their demands.

9. Act No. 838/95 relating to compensation for victims of the dictatorship finally passed into law. However, it will not be applied until the Ombudsman is appointed, for it is he who is responsible for the granting of compensation. This Act was drawn up in order to make it easier for victims to obtain compensation than under the previous cumbersome legal process applicable to claims for compensation from the State.

10. Furthermore, improvements were made in the administration of justice with the entry into force of the new Penal Code and the new Code of Criminal Procedure.

11. This year the new Penal Code (Act No. 1160/97) entered into force. For the first time torture was classified as an offence, carrying a penalty of not less than five years' imprisonment, and violation of physical integrity was penalized. The new Code also penalizes the use of force to obtain statements, and punishes the persecution of innocent people as well as criminal enforcement against innocent people by public servants. The practical application of these provisions will be very useful in combating impunity in respect of abuses and torture committed by public officials.

12. Amongst the various prison populations the provisions of the new Penal Code have raised great expectations, particularly as regards alternative punishments to imprisonment and measures to eliminate the numerous abuses against unconvicted prisoners during pre-trial detention. However, the appropriate application of these provisions will depend on the judges and it is possible that overcrowding in the prisons will not be relieved without a willingness on their part to carry out these measures.

13. Not long after coming to power, the former national Government under Raúl Cubas put forward, through the Ministry of Justice and Labour, a "Strategic Plan for Prison Modernization - Justice into the Twenty-first Century". The first encouraging feature of this Plan is its desire to approach the problem of prisons as an issue for the Ministry of Justice, which is the appropriate institution for the purpose. It is heartening to note the concern about the prison situation shown by the Government, which in this document states that it has "carried out a race against time to prioritize activities which, through their urgent nature and importance, will tend to defuse accumulated pressures generated by insensitivity on the part of the authorities reflected in a lack of respect for human dignity ...". The document also highlights the fact that changes will be made only where they are thought to be necessary, on the basis of perceived realities, defined strategic objectives and the implementation of a plan of action. To this end, a series of objectives is identified based on the specific implications of respect for human dignity in this matter.

14. One important concomitant of the structural reform of the criminal justice system is the creation of the institution of criminal enforcement. This new legislation establishes that from now on legislation for sentencing and pre-trial detention will be largely a matter for control and decision by visiting magistrates. The new laws allow for judicial control over prison

management, as well as all decisions affecting the fate of persons in detention, and the various alternative measures to imprisonment will be taken or in some cases revised by the judicial power.

15. In the strict sense, this represents judicialization of the sentence, because the visiting magistrate deals with all substantive matters which are presented to him once the sentence is enforceable and executory, as laid out under article 43 of the Code of Criminal Procedure. However, since the visiting magistrate is entrusted with seeing to "... compliance with the aims of pre-trial detention", he has a direct input in the fate of untried prisoners, the treatment that they receive and the punishments which are normally applied to them by the administrative authority responsible for Paraguay's prisons.

16. The visiting magistrate has two basic tasks: judicializing custodial penalties; and acting as guarantor of the proper functioning of penitentiary institutions. This will allow him to deal with two fundamental issues relating to imprisonment: (a) a lack of judicial control (the most important decisions are taken by the prison authority without judicial intervention); and (b) a lack of specialist defence for the accused person, who is exposed and defenceless vis-à-vis the administrative authorities when sanctions might be applied.

17. The State has an obligation to maintain social order, but the prevalence of human rights violations and impunity contributes to a breakdown in the rule of law. Society's concern with regard to crime cannot be used as a pretext for the security forces to take the law into their own hands: a policy of fear and arbitrariness will not provide security but instead will undermine the institutions which practise or tolerate such abuses.

18. The above statements regarding non-fulfilment of the constitutional clauses mentioned earlier are borne out, even more tellingly than by statistical data, by particular events in the prisons this year. The crisis within the system is evident when the State cannot even guarantee the life or physical integrity of the inmates.

19. On 8 July 1998 the executive promulgated Act No. 1286 (Code of Criminal Procedure) after over a year of debate. This new Code contains 506 articles, and is in line with the new criminal norms.

20. The Code of Criminal Procedure, inasmuch as this regulation was used to measure the rationale or gravity of criminal activity, continued with the discriminatory vision of the former Criminal Code (Prieto, 1994). These articles made it difficult to do full justice to female victims and to women accused of crimes.

21. Progress has been made in the treatment of rape victims. From August of this year, the Police Hospital has dealt with all rape cases recorded in Asunción, the metropolitan area and the Central Department. The reason for this centralizing measure is to refine the medical diagnosis system and to save victims (as happened in the past), from being exposed to disagreeable experiences during the medical examination necessary in order to proceed to the police complaint stage to prevent them from having to undergo pre-diagnosis tests more than once. Previously, the process had been very hard on victims since they had initially to go to a health

centre or first-aid institution in order to be examined; second, they needed to present themselves to the police; third, before judicial procedures could be initiated, they had to go to the police laboratory in order to have samples taken to serve as evidence; and, finally, they had to await the results before they could lodge their complaint. This project was conceived years ago, but could not be implemented because of a lack of agreement. Finally, it was decided to try out the proposal, because of the large number of cases pending in the medical centres, awaiting the required diagnosis.

22. Human rights violations related to land disputes in Paraguay continue to take place, as landless peasants have been occupying large tracts of little used or undeveloped land belonging to large landholders. The peasants maintain that all agricultural settlements originated in land occupations and that the Institute for Rural Welfare has never financed a settlement on its own initiative.

23. In Paraguay very important advances have been made and there can be no going back on these achievements. Although the right to conscientious objection to military service has not yet been regulated, conscientious objectors continue to come forward. As of 30 October, the total number of declared conscientious objectors over the year was 5,490, which gives an overall total of 14,702 cases since 1993. More than 50 per cent of these conscientious objectors live in inland areas. This year an average of 18 objectors came forward per day, compared to a daily average of 14 in 1997 and 6 in 1996. This unforeseen growth has caused logistical problems for the armed forces, which have been obliged to reduce troop size by 15.5 per cent, from 15,510 to 13,100 soldiers.

24. At its ordinary session of 17 March 1998, the Chamber of Deputies was unable to achieve a majority to override the total veto of the executive on Act No. 1,145/97, "regulating conscientious objection to compulsory military service". On 28 July, seven conscientious objectors brought an action of unconstitutionality against the Compulsory Military Service (No. 569/75), before the Supreme Court of Justice, requesting the Court to declare the contested legislation inapplicable.

25. Act No. 838 "which compensates victims of human rights violations during the dictatorship from 1954 to 1989" is in force, but to date no one has been able to benefit from it because of the absence of the Office of the Ombudsman, which is responsible for its implementation. However, the introduction of such an office does not prevent victims from filing a suit for compensation, particularly in cases not covered by the Act.

26. One significant feature of Act No. 838 - significant because official documents tend to avoid such expressions - is its characterization of the regime of General Alfredo Stroessner as a "dictatorship", defining it as "a dictatorial system prevailing in the country between 1954 and 1989". Furthermore, the Act acknowledged the State terrorism which prevailed in the country by noting that there are victims who "have suffered violation of their human rights to life, integrity of person and freedom by officials, employees or agents of the State" (art. 1).

27. Human rights violations "for political or ideological reasons" which are subject to compensation are the following:

1. Enforced disappearance;

2. Summary or extrajudicial execution;

3. Torture resulting in serious and manifest physical or psychological impairment;

4. Unlawful detention for a period of more than one year (art. 2).

28. Given these requirements, there will not be many beneficiaries of this Act because the majority of cases involve unlawful detention for less than a year; the practice consisted of frequent detentions for short periods of time for political enemies, opponents, critics of the regime or simply the independently minded, with the aim of frightening and at the same time intimidating the whole population. Nor does the Act cover those who suffered exile, those who were stripped of all their belongings, property, houses or land, or those who lost their jobs or were unable to pursue their studies or professional career.

29. There are no precise data regarding the total number of potential beneficiaries of this Act given that since the fall of the dictatorship the Government has not managed to set up a commission of inquiry, as in other, neighbouring countries, to establish the truth about the dead, the disappeared and the tortured. This would have been the first step, and the second would have been acknowledgement of State responsibility for these crimes, concluding with the obligation to make redress, including economic compensation. The institution with the most data on the subject is the Committee of Churches (CIPAE), founded in 1976, which has documented the repression which took place under the Stroessner dictatorship as far as possible. The other source is the Judiciary Documentation Centre, better known as the "Archive of Terror", from which details are being obtained under the habeas data procedure (information regarding the victims to be found in this archive) that will be used as evidence for applicants for compensation under Act No. 838. In addition, the National Human Rights Commission has carried out a census gathering a considerable amount of data regarding victims to be compensated.

30. It should also be mentioned that the stipulated compensation is so meagre as to be little more than token, and cannot be compared with the indemnification given by Governments of neighbouring countries. The maximum provision will be only just over US$ 20,000 and the lowest about US$ 3,500. Given the health situation of victims of the dictatorship over the years, these sums will hardly be enough to help them pay for medical, psychological, psychiatric or other urgently needed treatment. Many of those who gave part of their lives to the struggle for the freedom of our people are now dying abandoned and forgotten, because this Government too is composed of people who benefited from the Stroessner dictatorship, and are now claiming to be the new democrats.

31. The Act also stipulates that the executive will pay the agreed compensation with funds from the allotment "various obligations of the State". This point has been challenged by many, including newspapers such as ABC Color, which objected to the practice in its editorials, on the grounds that there was no reason for the poor to pay for the crimes of the dictatorship through

their taxes. It is time that article 106 of the National Constitution confirms the personal responsibility of State officials, but without prejudice to the subsidiary responsibility of the State, "which shall be entitled to demand the reimbursement of any sums it has had to pay in that connection". That is to say, individuals should not have to pay for Stroessner, who is living very peacefully in Brasilia, or for Sabino Montanaro, living in Honduras, or various other people who are beyond the reach of justice, but the State has an obligation to compensate the injured person and afterwards to recover from those who are personally responsible and guilty. There is also a lesson to be learned in this: that violating human rights also entails pecuniary punishment, which will sometimes be even more painful than physical punishment for those who base their power on money.

32. It is appropriate to note that in the initial draft of this Act, on the initiative of the National Human Rights Commission, the proposal was made to recover those ill-gotten gains from the hands of the leading figures under the Stroessner regime, and to set up a national fund with the money to compensate victims of human rights violations. This was also the electoral pledge of the new President, General Rodríguez, after Stroessner was ousted. However, corruption ate into these recovered assets which, unbeknown to public opinion, did not benefit the people but only the new holders of power.

33. In early November, Parliament was seeking a way of securing the appointment of the Ombudsman, which requires a two-thirds majority of votes from deputies (54 out of 80). If the Office of the Ombudsman is set up this year, the way will be clear for the first compensation claims to be presented to this new institution, as provided for under Act No. 838. As most of the victims are ordinary people - workers, peasants, slum-dwellers, etc. - it will also be necessary to set up a secretariat to assist them in drawing up their claims, as well as in the various institutional procedures. The National Commission is considering the possibility of helping in this regard.

34. One possible obstacle to the practical application of this Act is the provision of article 3 whereby, in order to substantiate their claims, persons whose human rights have been violated must apply to the Office of the Ombudsman "which will evaluate the evidence presented, following referral to the Attorney-General of the Republic for 30 days". This provision of article 3 of Act No. 838 can be a serious obstacle in terms of the promptness of the compensation procedure, since the Attorney-General is an official of the Government, which since 1989 has been formed by former repressers and violators of those very rights it is sought to protect. We do not believe that any government official is fully at one with the Universal Declaration of Human Rights although the Supreme Court of Justice has just acceded to it, and successive international conventions and agreements which expand on this text have been ratified by the Paraguayan State.

35. The system put into effect by the Human Rights Commission since certificates of conscientious objection started to be issued in 1993 will prevent this task being passed on to the Standing Commission over this summer, as happened during all previous recesses. At the end of the first half of the 1998/1999 legislative year a total of more than 15,000 young people had been given certificates of conscientious objection since 1993, when for the first time the Lower House, meeting in plenary, authorized its Human Rights Commission to issue these certificates.

36. This year, with the change of membership of Congress, some objections were raised to the system which had been put in place, such as the agreement between members of Parliament and the former head of DISERMOV, General Juan Pozo, that all objectors must first of all be enlisted. To this effect, a member of DISERMOV was even attached to the Commission, leading to a protest on the part of young objectors, who marshalled sufficient opposition to have the decision temporarily revoked. However, the basic problem has not yet been resolved.

37. However, the court notes that in 1959 the Universal Declaration of Human Rights was fully in force, because it had been approved by the United Nations on 10 December 1948, and the Republic of Paraguay had acceded to it; therefore, the facts referred to were framed within it and subject to relevant legal norms, with precedence over domestic legislation, as having higher rank. The court highlights the fact that, under article 5 of the Universal Declaration, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, "treatment and situations reported in proceedings as inflicted by the defendant and, subsequently, the subject of a complaint against the accused". The court also quotes article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity adopted by the General Assembly on 26 November 1968, according to which no statutory limitation shall apply to crimes against humanity, including the "grave breaches" enumerated in the Geneva Conventions of 12 August 1949 (wilful killing, wilful injury, torture or inhuman treatment). At the time when the accused is said to have committed these acts, national conventions or covenants referred to above were in force. The decision is also substantiated by Supreme Court judgement No. 585 of 31 December 1996, which confirmed and emphasized the non-applicability of statutory limitations to crimes against human rights.

38. Despite the Supreme Court's decision, the beneficiaries of the Compensation Act will not yet be able to obtain monetary restitution from the State since the Ombudsman, who is the person who must decide whether or not the applicants should be compensated, is still to be appointed by Congress.

39. In Paraguay only 4.12 per cent of prisoners have been sentenced. Ninety per cent of those who leave prison do so not because they have completed their sentence, but because the case has been dismissed. The judiciary, which is the body primarily responsible, directly or indirectly, for prison services, must expedite proceedings; a person should not be detained where guilt has not been proved or be abandoned by his lawyers through a lack of financial means. In such cases it should be possible to apply to institutions which are able to assist. It should be a concern and a function of judiciary to discover the causes and circumstances of crimes, as well as to identify Mafia leaders and punish them strictly and justly.

40. Impunity has always been a source of corruption and shelter and strength for offenders, particularly "privileged" offenders.

41. In Paraguay much has been done to promote human rights, particularly over the last 9 to 10 years, where given the previous history of the country far more progress has been required than by the majority of countries. There is an urgent and inescapable need to plan public policies in the area of human rights, to devise a National Strategic Plan and its corresponding Plan of Action, and to set short-term, medium-term and long-term goals, according to the specific issue

concerned. Within the framework of responsibilities, the points determined by the Plan must be strictly respected, and those ministries and offices coming under the authority of the executive, as well as other branches of government, must undertake to do so.

42. The main responsibility, within the Ministry of Justice and Labour, as coordinating, monitoring and evaluation body, lies with the Directorate-General for Human Rights, in conformity with its creative and operational role in national public policy, a function which it will perform with all the efficiency and ability which has characterized it so far despite being so recently established. Its goal is rigorous fulfilment of the tasks it has been set, spurred on in this effort by the passionate political will shown in all its endeavours.

List of annexes*

1. Penal Code

2. Code of Criminal Procedure

3. Prison Regime Act, No. 210

4. Compulsory Military Service Act, No. 569

5. Strategic Plan for Prison Modernization of the Ministry of Justice and Labour, 1998

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* The annexes are available for consultation in the archives of the Office of the United Nations High Commissione. for Human Rights.